

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1947**

**No. 437**

**PHILIP B. FLEMING, TEMPORARY CONTROLS  
ADMINISTRATOR**

**vs.**

**W. H. HILLS**

**ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE TENTH CIRCUIT**

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In the United States Circuit Court of Appeals for the Tenth  
Judicial Circuit

3497

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, v  
APPELLANT

W. H. HILLS, APPELLEE

Appeal from the District Court of the United States for the  
District of Kansas, First Division.

In the above-entitled cause certain questions of law have arisen on the record with respect to which this court desires the instructions of the Supreme Court of the United States for the purpose of decision of such cause. Accordingly, a certificate of such questions has been prepared and duly signed by the Judges of this court sitting in said cause as follows:

*Certificate of question of law*

*Statement of facts*

2 This is an action for treble damages and for an injunction under the Emergency Price Control Act, as extended and amended (50 U. S. C. A. App., Sec. 901, et seq.), and under the Rent Regulation for Housing, as amended (8 F. R. 7322).

Hills, the defendant below, is the owner of certain housing accommodations located in Manhattan, Riley County, Kansas, and within the Junction City-Manhattan Defense Rental Area, and subject to rent regulation. The housing accommodations consist of six furnished apartments, two of which are not involved in this cause. The apartments were remodeled in 1943, and were registered within 30 days after they were first rented, as prescribed by Sec. 7 of the Regulation. Subsequent to such registration, and on December 17, 1943, the maximum rents were reduced by the then Rent Area Rent Director, C. B. Dodge, Jr., pursuant to Sec. 5 (c) of the Regulation. On March 7, 1945, B. W. Diggle, successor to Dodge as Area Rent Director, issued an order further reducing the maximum rents set by Dodge.

3 The cause was tried to the court without a jury. The parties stipulated that the only issue was the validity of the second order and that, if the second order was valid, the defendant made overcharges in the amount claimed in the complaint. On October 29, 1946, the trial court filed a written opinion in the cause in which he held that the burden was on the Administrator to establish the validity of the second order and that he had failed

to introduce proof establishing the validity of such order. On the same day, the court entered a judgment for Hills. The Administrator appealed.

On the date that the trial court handed down its opinion and entered its judgment, exclusive jurisdiction to pass on the validity of a regulation or order issued by the Administrator was vested in the Emergency Court of Appeals.

The appeal in this court was submitted on the 16th day of September 1947. The Emergency Price Control Act of 1942, as amended and extended by the Price Control Extension Act of 1946, expired by its terms June 30, 1947.

*Questions certified*

(1) On remand, will the District Court of the United States for the District of Kansas, First Division, have jurisdiction to determine the validity of the second rent order and should we direct the District Court to pass on the validity of such rent order?

(2) If the first question is answered in the negative, does the Emergency Court of Appeals still have jurisdiction to determine the validity of the second rent order?

(3) If the second question is answered in the affirmative, and this court remands the cause with directions to enter judgment as prayed for against Hills, may Hills, under Sec. 204 (e) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. App., Sec. 924 (e)), apply to the District Court for leave to file in the Emergency Court of Appeals a complaint against the Administrator, setting forth objections to the validity of the second rent order, and, upon proper petition and showing, obtain the relief provided for in Sec. 204 (e), and should we so direct on remand?

ORIE L. PHILLIPS,  
WALTER A. HUXMAN,  
ALFRED P. MURRELL,

*Judges of the United States Circuit Court of Appeals,  
sitting in said cause.*

It is now here ordered by this court that such certificate be filed and entered of record in this court and that the original of such certificate be duly certified by the clerk of this court and by him duly transmitted to the Supreme Court of the United States for its action thereon.

6 In The United States Circuit Court of Appeals for The Tenth Judicial Circuit

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Judicial Circuit, do hereby



certify that the foregoing is a true copy of an order of this court entered on this 5th day of November 1947, in the cause numbered 3497, Philip B. Fleming, Temporary Controls Administrator, Appellant v. W. H. Hills, Appellee, as fully and completely as said order remains of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit at my office in the City of Wichita, Kansas, on the 5th day of November A. D. 1947.

[SEAL]

ROBERT B. CARTWRIGHT,  
*Clerk, United States Circuit Court of  
Appeals for the Tenth Judicial Circuit.*

United States Circuit Court of Appeals, Tenth Circuit

3497

PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR,  
APPELLANT

VS.

W. H. HILLS, APPELLEE

Appeal from the District Court of the United States for the  
District of Kansas

It appearing to the court that the certificate of question of law in the above entitled cause, certified by the clerk of this court to the Supreme Court of the United States, contains an erroneous date in that the date of the order issued by B. W. Diggle further reducing the maximum rents set by Dodge is given as March 7, 1943, and that the correct date of such order is March 7, 1945, it is now here ordered that the certificate of question of law be corrected by changing the date March 7, 1943, appearing at the end of line four from the bottom of page two of such certificate, to March 7, 1945.

It is further ordered that the clerk of this court transmit a certified copy of this order to the clerk of the Supreme Court of the United States.

In The United States Circuit Court of Appeals For The Tenth  
Judicial Circuit

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Judicial Circuit, do hereby certify that the foregoing is a true copy of an order of this court entered on this 11th day of November 1947, in the cause numbered 3497, Philip B. Fleming, Temporary Controls Administrator, Appellant

vs. W. H. Hills, Appellee, as fully and completely as said order remains of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit at my office in the city of Denver, Colorado, on the 11th day of November A. D. 1947.

[SEAL]

ROBERT B. CARTWRIGHT,  
*Clerk, United States Circuit Court of  
Appeals for the Tenth Judicial Circuit.*

[Endorsement on cover:] File No. 52667. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 437. Certificate. Philip B. Fleming, Temporary Controls Administrator vs. W. H. Hills. Filed November 8, 1947. Term No. 437 O. T. 1947.

